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MISSING RECORDS.

No. I.

RECORDS OF THE KILKENNY CONFEDERATE ASSEMBLY,
A.D. 1642—1650.

BY JOHN P. PRENDERGAST, ESQ., BARRISTER-AT-LAW.

[Read at the Meeting of January 8th.]

There is no period of the history of Ireland so interesting to the historian or the lawyer, or so important for the statesman to study, as the æra of the Great Rebellion of 1641. Then was formed that balance of conflicting interests which, founded on the great landed settlement adopted at the Restoration, lies at the root of the Irish land question, in the elucidation of which a full history of the Cromwellian settlement would greatly aid.

Unfortunately, the destruction of documents connected with this æra has been unusually great, and it therefore becomes the more important to rescue or bring to light such as survive.

The two great classes or interests between whom the lands of Ireland were divided by lot in 1654, were the adventurers and soldiers—the former having adventured their money, in 1642, towards subduing the rebels in Ireland, on condition of being satisfied out of such lands as should be forfeited there—the latter having Irish lands forced on them in satisfaction for their arrears of pay.

The committee of adventurers who sat at Grocer's Hall, London, transacted the business of the great body of adventurers for more than ten years, i.e., from the time the money was advanced until they received lands in satisfaction, in 1654, and thus there must have been accumulated a large body of very important documents; which, if not destroyed, have been lost for all the purposes of history, no notice having been ever taken of their existence.

The proceedings of the soldiery were carried on by the votes and resolutions of general committees of officers of the army, and by the acts of regimental sub-committees who divided and set out the lands to the several troops and companies. At the Restoration, all these records were brought together in the course of the proceedings under the Act of Settlement, in the Irish council office, in Essex-street, Dublin, where a great fire unfortunately broke out on the 15th April, 1711, destroying the council office and surveyor-general's office adjoining, and with them the vast mass of documents which was then lodged there. All these documents are of course irrecoverably lost. But there is another extensive series of documents, the records and proceedings of the supreme council and general assembly of Confederate

Catholics, otherwise called the Kilkenny Confederates, which, though missing, have not been destroyed, and may yet be brought to light, if attention be turned towards the discovery of them.

It would be difficult to overrate the importance, to a clear understanding of the history of that period, of the records of a government that, commencing its sittings in Kilkenny on the 18th November, 1642, for nearly ten years performed all the offices of sovereign power, establishing courts for administration of justice, raising armies and taxes, and stamping coin in its own name.

That these documents survived the fall of the government whose acts they recorded, and were for many years deposited in the public offices, from whence they were afterwards withdrawn to be placed in some private collection (where it is hoped they may yet be found), will be abundantly evident.

Their preservation is somewhat strange, for it is usually the last act of a defeated and proscribed government to provide against their books and papers falling into the hands of the victorious power, either by destroying or concealing them; which latter course was probably taken by the council of the Confederates, as it was nearly four years after the taking of the City of Kilkenny that these important documents fell into the hands of Cromwell's government. On 15th of March, 1650, Kilkenny surrendered: but it was not until the month of February, 1654, that the following order was issued, which shows that these documents had been only just then discovered.

"To Colonel Solomon Richards—

"Sir—Understanding that there were several Books of the proceedings of the Supreme Council of the Confederate Catholics in Ireland, and other papers of public concernment, lately seized and come unto you, we desired Colonel Sankey to send for them; and he hath informed us of several letters he writ for that purpose, but hitherto we hear of no returns. We look upon it as a business of very great weight, and thought it our duty not to rely upon such expectations any longer, and therefore have sent this Bearer, Robert Hilliard, one of our Messengers, as an express to receive them from you, to whom we desire you forthwith to deliver them with an Inventory thereof, sealed up to the end they may be speedily and safely brought to us from garrison to garrison. We shall use no further argument, but, in expectation to hear speedily from you, we remain,

"Your very loving friends,

"CHARLES FLEETWOOD, MILES CORBETT, JOHN JONES."

"Dublin, 20th February, 165 $\frac{3}{4}$."

"Postscript—You have enclosed sent you a Commission of Enquiry after other books and papers of this nature, which we desire you may carefully execute."*

* *Privy Council Book*, A. 90, p. 620.

“ COMMISSION. ”

“Ordered, that Colonel Solomon Richards be and is hereby empowered to make search and enquiry after all such books of entries and other papers of the proceedings of the late General Assembly of the Confederate Catholics in Ireland, and of all or any other Courts or Offices established by or under them : and to that end to send for parties and witnesses, and to examine them upon oath as he shall see cause. And such Books and other public papers as shall be so discovered to seize, or cause to be seized into his hands or custody : and to send them from time to time by the hand of some trusty officer from garrison to garrison to the said Commissioners of the Commonwealth.”

“Dublin, the 20th February, 165 $\frac{3}{4}$.”*

Colonel Sankey, to whom the commissioners for the affairs of Ireland first addressed themselves, was then governor of the County of Tipperary, and colonel Solomon Richards (who seems to have treated the orders of his commanding officer and the government very lightly) was at the same period one of the commissioners of revenue for the precinct of Clonmel.

It is observable that the foregoing order speaks of the books and papers of the supreme council only, a sort of executive body elected out of the general assembly, in which latter body resided the full power of the Confederate Catholics. The records of this latter body would seem from the following order to have been secured by the government within a few weeks afterwards, and from the circumstance of the order being addressed to the governor of Kilkenny, it may be inferred that it was in that neighbourhood they were found.

“Ordered, that the Governor and Commissioners of Revenue at Kilkenny do forthwith deliver, or cause to be delivered unto James Mortimer, Esq., sergeant-at-arms, or unto such as he shall appoint to receive the same, all such Books, Writings, Papers, and Records as are in their custody, or in the custody of the Treasurer or others, relating to the late pretended General Assembly or Supreme Council of the Confederate Catholics sitting at Kilkenny, to be sent to the said Commissioners of the Commonwealth close sealed up. And they are hereby further Ordered forthwith to send away the said Books and Papers with the persons aforesaid, with a sufficient convoy to the next garrison, and so to Dublin. And the said Governor and Commissioners of Revenue aforesaid, are to inform themselves by all due ways and means what other Books, Papers, and Records relating to the aforesaid Assembly or Council are in the custody of any persons, and to secure the same : and to give the said Commissioners of the Commonwealth a particular account of their proceedings therein, together with the names of all such persons as have the same in their custody or within their knowledge. And they, or any two or more of them, are further

* *Privy Council Book*, A. 85, p. 130.

authorised to examine upon oath all persons in whose custody they now are, or have been in since the same have been taken and seized on, and that they are not any ways embezzled or altered, or any of them taken away or concealed. Dublin, the 25th of April, 1654.

“CHARLES FLEETWOOD, MILES CORBETT, JOHN JONES.”*

The tenor of these orders bespeaks the importance of the Kilkenny records to the government. Their value is obvious. They afforded ready and conclusive proof to establish the guilt of the principal Roman Catholic families in the country, who almost all had become members of the Confederacy at Kilkenny. They were accordingly lodged for greater security in Cork House, then the seat of government, and there is evidence of the very early use they were put to in defeating the claims of parties to be restored to their estates, or to be dispensed from transplantation to Connaught, or to have a larger livelihood assigned them there than the Act of Qualifications entitled them to; for when the court of claims and titles to land was opened at the King's Inns on the 6th June, 1654, at which for a short period Catholics of the counties adjacent to Dublin were allowed to present their claims (all others of that religion being directed to attend the opening of a court of qualifications at Athlone, and to transplant in the mean time), a reference to these books became a matter of daily occurrence. It seems to have been the practice of this court, upon any person presenting a claim to a sequestered estate, to direct a search as a matter of course against the name of the claimant in the books at Cork House, to ascertain if he had taken any part in the proceedings at Kilkenny. The following, which is one out of many such, shows the form of the order:—

“July, 1654.—Ordered, that Mr. Solicitor-general Uffett make diligent search in the Books at Cork House touching the discovery and finding out of the delinquency of the several parties hereunder written, and make return unto us forthwith what he finds herein.†

“Signed by order of the Commissioners,

“ROBERT JEFFREYS.”

“Sir Redmond Morris, Knt,
“James Clinton, of Clintonstown,
“Theophilus Carey,
“George King, gentleman,

“Robt. Byssie, late of Dublin, and
“Margaret his daughter,
“William Angon, and
“Simon Cardiff,

“Humphrey Reynolds,

“Harvey Morris.”

The jealous care with which the commissioners of the court of claims guarded these documents, is evinced by the following order:—

“June, 1654.—Ordered, that Mr. Nicholas Combe doe forthwith take into his charge all the Papers, Books, and Writings now in the upper gallery at Cork House, relating to the transactions of the Supreme Council and General Assembly at Kilkenny, and not permit any

* *Privy Council Book*, A. 85, p. 209.

† *Order Book of Court of Claims and Titles*, in the Court of Exchequer, p. 37.

clerk of the said office, or any other person to peruse any of the said Books, without his order or our special directions.”*

These records were removed from Cork House in the month of April, 1655, about which time the usurping government had appointed a court to sit at Athlone, to try the titles and qualifications of the Irish—in other words, to hear the claims of the Confederates to their landed estates, then generally sequestered on the assumption of their guilt, and to adjudge them, according as they were proved to have more or less largely participated in the rebellion, a larger or a smaller equivalent of land in Connaught—none being allowed to remain on the Leinster side of the Shannon, but those who could prove their “constant good affection,” during the whole of the rebellion, to the parliament of England. No better evidence, of course, could be produced before this court to establish a participation in the rebellion than these records, and accordingly, by an order of the 1st April, 1655, it was “ordered that the Comptroller of the Trayne do prepare, by to-morrow morning, two draughts of oxen to carry away the records that are now kept at Corke House, for Athlone, where they are to be used by the Commissioners of Qualifications.”† The records here are not named, but that they were the records in question, appears incidentally, by another entry of 19th March, 1655, whereby it is “Ordered, that the room over the Council Chamber in Cork House (wherein were kept the late records of the Council at Kilkenny, which are now removed to Athlone), be reserved for the keeping of the Records of this Council.”‡ The proceedings of the court of qualifications at Athlone, ended on 24th June, 1656, whence the judges went to Mallow, to hold a special court, to try the “constant good affection”-claims of the ancient English inhabitants of Cork, Kinsale, and Bandon; whither these records followed them. The proceedings of the court at Mallow having concluded, the security of the Kilkenny assembly’s records again became an object of the government’s care—and on the 24th September, 1656, it is “Ordered, that Captain Edward Tomlyns, Comptroller of the Trayne, do prepare a close wagon to send to Mallow in the County of Cork, to receive the records that are now there, and will be put therein to be brought back to Dublin; and that the Lord Henry Cromwell be requested to order a sufficient convoy for guarding the same in passing from Mallow to Dublin.”§

The execution of the latter part of this direction appears by an order of the 10th October, 1656. It is as follows:—“Ordered, that Mathew Doyle, wagon master, being appointed to convey the Records from Mallow, the Governors of Callan and Kilmallock, on the way to Mallow, be directed to furnish respectively 4 horses, as a convoy from Callan to Kilmallock, and a like number from Kilmallock to Mallow, and none of the guard on the way thither to depart from his duty, but constantly

* *Order Book of Court of Claims and Qualifications*, in the Exchequer, p. 14.

† *Privy Council Book*, A. 5, p. 16.

‡ *Ibid.*

§ *Ibid.*, A. 10, p. 170.

to attend the guarding of the wagons.”* With these precautions the records were at length returned to Dublin in safety, as appears by an order of the 12th November, 1656, whereby Mr. Enoch Goulbourne is “directed to take charge of all the Records and other papers lately come from Athlone and Mallow to the Castle of Dublin.”†

The next notice of these records occurs after the Restoration, in the year 1663, when the Irish House of Commons, headed by their speaker, Sir Audley Mervyn, presented an address, at the Castle of Dublin, to the duke of Ormonde, lord lieutenant of Ireland, against the proceedings of the commissioners for executing the Act of Settlement. The House, then composed almost exclusively of the Cromwellian party, was indignant that so many Roman Catholics had been allowed to establish their innocence, and thereby their title to be restored to their estates. And the address suggested that a more rigorous construction should be put on the term, innocence, and “to this end that the books of Kilkenny (among other evidences enumerated) be taken for good evidence on behalf of his Majesty, to bar claimants of their innocence” (*Sir Audley Mervyn’s Speech on presenting the Address of the House of Commons*, small 4to. Dub. 1663). The next and last notice of these records is found at a period fifteen years later, in Borlase’s “History of the Irish Rebellion,” printed in the year 1678. They were then, it appears, withdrawn from the public offices, and placed in some private collection. The name of the nobleman or gentleman who then possessed them, is not given, but he is alluded to in such terms as would apply to the duke of Ormonde. Both the character of the possessor, and of his library seems to have been so eminent, as to have been understood by Dr. Borlase not to need naming. These and other circumstances agree well with the supposition that the person alluded to is the duke of Ormonde, who probably got a grant of them from the king, as he might lawfully do, the documents not being, in legal sense, records, or public property.‡

After stating the difficulty of illustrating some transactions of the period, Dr. Borlase continues—“In clearing of which, I would have been glad of more Originals than I could meet with, specially such as might have detected the whole Proceedings at Kilkenny, where the Design was so closely anviied, as all things afterwards were found there in defiance of his Majesty’s Authority. There first the Clergy compact a general Congregation, which summoned a general Assembly equivalent in their Veneration to a Parliament; and that established a Supreme Council of the Confederate Catholicks, which received from them Sanction and Laws, by which Coin was stamped, National and Provincial courts established, Estates settled, their Clergy re-established, the Pope’s Nun-

* *Privy Council Book*, p. 119.

† *Ibid*, p. 218.

‡ If ever these documents were in possession of the duke of Ormonde, there is no trace of them now amongst the records preserved at Kilkenny Castle.—
Eds.

cio received, Ambassadors sent thence, and others entertained from Foreign Princes ; all under a Sovereign Seal of their own, and what else might bespeak them independent on any, but their own Power : but the Evidence of these and some other Records, being the Treasure of fearful Men, whom a specious artifice had charmed, easy Keys or interest could not freely purchase. The Records, however, of that presumptuous Assembly, are notwithstanding the Unfortunateness of the Age, yet secured in *his Library, which, though before it wanted little to make it venerable, will in future Ages be resorted to, as a Treasure invaluable, securing those Secrets, which the Malice of so potent an Enemy would have improved to the ruin of an Empire.*”*

Now it would be very natural for the duke of Ormonde, who was tender of the interests of the Roman Catholic nobility and gentry of Ireland, to which class he by birth belonged (being the only Protestant, he himself says, out of an extensive family), to refuse to Dr. Borlase, a man of Puritan prejudice and interests, the use of these books, in which would be found the names of the duke’s brother, and most of his relatives by blood and marriage. This very tenderness would also mark out the duke to the king, in an age when prejudice ran high, as the fit depository of these records which contained so much to inflame the Puritan party against the Irish Roman Catholic nobility and gentry, an interest that the king and the duke were both as anxious to preserve in the state as the Puritans were to destroy, and the respectful terms Dr. Borlase uses, in alluding both to the possessor of these interesting records and to the refusal he met with, would be very appropriate, were the duke of Ormonde intended—then not only lord lieutenant of Ireland, but by his personal character possessed of the highest authority in the kingdom.

NOTE.—Since the foregoing paper was read, the writer is indebted to John Davis White, Esq., registrar of the consistorial court of Cashel, for the following interesting document found among other old papers in the diocesan registry, Cashel, which bears on a passage in Borlase’s preface, above quoted :—

“The humble petition of Thomas Lord Archbishop of Cashel, “To the right Honorable the greatt assembly of the Confederat Catholiques of Ireland—

“Shewing that yo^r suppliant’s predecessors, the Catholique archbishops of Cashell, were seased in the right of the said archbishoprick of the libertie and regalitie of the Countie of Crosse Tipyrary for them and their successo^{rs} : That Milerus, protestant archbpp of the said sea, amongst others his dilapidations, for no consideration avayleable to the said archbishoprick but for privat ends & interests of his owne, gave up & surrendered the same libertie and regalitie to the crowne to the disinheriting of the said sea & contrary to the canons of the Church &

* Borlase’s *History of the Irish Rebellion of 1641*, pref. p. vi. Dublin edition, 1745.

the oath of the said archbishop taken at his consecration. The premisses considered may it please yo^r hono^{rs} upon the present settlement to insert this yo^r pet^s case amongst the particular instances for being righted in the next free parliam^t, & he shall pray.

“Kilkenny, } By the generall assembly of the Confederate Catholics
17 Jannuar } of Ireland.
1648-9. }

“This Assembly doe specially recommend to his Excellency the Lord Lieutenn^t the”

The remainder is so rotten and torn that it could not be read.

It will be observed, that the minute of the assembly bears date just twelve days before the beheading of king Charles I., about which period lord Ormonde concluded the second peace, called the peace of '48, with the Confederate Catholics, by which he made greater concessions to the Roman Catholics than at any former time, in hopes of bringing the forces of the Confederates to the king's aid, and thus averting the fatal catastrophe now seen to be approaching.

MISSING RECORDS.

No. II.

MUNIMENTS OF THE CORPORATION OF KILKENNY.

BY JOHN G. A. PRIM.

[*Read at the Meeting of May 7th.*]

At a recent meeting of this Society a highly interesting paper was read, being an inquiry as to the present existence and whereabouts of the records of the celebrated assembly of Confederate Catholics in Kilkenny. Although that paper has not yet led to the result desired, by bringing to light the important documents referred to, it is to be hoped it may yet, when given a wider circulation by being printed in the Transactions of this Society, produce that effect. But be this as it may, I believe the example set by Mr. Prendergast to be one worthy of imitation, and I therefore wish to bring under the consideration of the Society the propriety of instituting an investigation as to what has become of certain missing records formerly in the possession of the corporation of Kilkenny, with a view of ascertaining whether they are still extant, in whose custody they are, and whether it may not be possible to procure access to them, so that extracts